



**National Republican Congressional Committee**

**Donald F. McGahn II**,  
General Counsel

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November 1, 2004

**MUR # 5597**

Lawrence H. Norton, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Complaint Against John Wolfe and Wolfe for Congress

Dear Mr. Norton:

The National Republican Congressional Committee, by and through its General Counsel, hereby brings this complaint pursuant to 2 U.S.C. 437g(a)(1) against John Wolfe, his campaign committee and its treasurer. The National Republican Congressional Committee is located at 320 First Street, S.E., Washington, D.C. 20003.

**I. Factual Background**

John Wolfe is an attorney, and is the Democratic candidate for U.S. Congress in the Third Congressional District of Tennessee. Wolfe was also an unsuccessful candidate for U.S. Congress in the 2002 general election. The Commission entered into conciliation with Wolfe regarding activities undertaken by Wolfe during the 2002 election, and Wolfe paid a fine.

**A. Wolfe Late and Inaccurate Pre-Primary Election Report**

According to the public record and as reported in news articles, Wolfe failed to file campaign finance disclosure reports with the Federal Election Commission ("Commission"). Specifically, Wolfe failed to timely file the Pre-Primary Election Report. The State of Tennessee held its primary elections for the 2004 general election on August 5, 2004. As such, Wolfe's Pre-Primary Election Report should have been filed no later than July 26, 2004. However, Wolfe did not file the Pre-Primary Election Report until July 28, 2004, two days after the filing deadline.

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Moreover, Wolfe publicly admitted that the report, when finally filed with the Commission, contained "mathematical errors and discrepancies." See "Wolfe Misses Campaign Finance Report Deadline," *Times Free Press* (August 10, 2004). Wolfe admittedly filed a late and inaccurate Pre-Primary Election Report.

B. Wolfe's Radio Broadcasts

Wolfe also purports to "host a radio program" on the Chattanooga, Tennessee radio station WGOW 102.3 FM that airs from 10:00-11:00 a.m. every Saturday morning. This "show" is also simulcast over the internet and can be accessed at <http://www.wgow.com>. Wolfe also claimed to "host a radio show" during his unsuccessful candidacy for U.S. Congress in 2002 – such activities resulted in Wolfe paying a fine to the Commission.

As in 2002, Wolfe is again broadcasting political advertisements under the guise of a commercial "radio program." During these political advertisements Wolfe continually makes baseless and derogatory charges regarding Congressman Wamp, expressly advocates the defeat of Congressman Wamp; expressly advocates his own election; and solicits campaign contributions.

Examples of Wolfe's political advocacy during this radio broadcast include:

- Soliciting funds for his campaign and offering to match the funds he receives from callers to his show. (August 3, 2004).
- Soliciting votes for his candidacy: "I am running for Congress. I've got to make this as part of the announcement. And it's U.S. Congress, Third District. It's the seat now occupied by Mr. Zach Wamp and I am a candidate in the Democratic Primary on August 5<sup>th</sup> and I urge you all to vote for me August 5<sup>th</sup> if you want to see a change, see somebody not bought off by the power structure, somebody independent yet competent and know what he's doing, and has a good business record, has a good record in a lot of areas.... (August 16, 2003).
- Challenging Congressman Wamp to come on to the show for a debate and even offering Wamp \$2,500 if would show up. (August 16, 2003).
- Wolfe occasionally states something similar to a "disclaimer." However, he either precedes or follows the disclaimer with statements about how "stupid" the disclaimer is and how he wants to "challenge" the FEC ruling that requires his disclaimer. For example, Wolfe prefaced a "disclaimer" by stating that it was "stupid" and went on to say "I'm John Wolfe and I approved this message." Moreover, his "disclaimers" are not even accurate. He does not state who paid for the advertisement or radio show. (April 10, 2004).

## II. Legal Analysis

### A. The Politically-charged Wolfe Radio Show is an "Expenditure"

An "expenditure" is defined as including "any purchase . . . made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431. In addition, the Act and Federal Election Commission ("FEC") regulations mandate that all communications expressly advocating the election or defeat of a clearly identified candidate for federal office must carry a disclaimer identifying the sponsor.

Further, Advisory opinions issued by the Commission support the conclusion that the fees paid by Wolfe to host the radio program constitute reportable expenditures. In Advisory Opinion 1990-5, the Commission concluded that a public policy-oriented newsletter originating with or funded by a candidate would be campaign-related, even without explicit reference to or discussion of your candidacy or campaign in the newsletter, or presentation of policy issues or opinions closely associated with you or your campaign, would be inevitably perceived by readers as promoting your candidacy, and viewed by the Commission as election-related and subject to the Act." *Id.* Several advisory opinions state, within the context of discussing what constitutes an expenditure, that "the absence of solicitations for contributions or express advocacy regarding candidates will not preclude a determination that an activity is 'campaign-related.'" *See, e.g.*, Advisory Opinion 1992-5. A candidate cannot evade his responsibility to inform the public of his expenditures merely by carefully parsing his statements to avoid the magic words that expressly advocate the election or defeat of his opponent.

In contrast, the Commission has provided guidance as to what constitutes a legitimate public policy program and thus not an expenditure under the Act. In AO 1992-5, the Commission concluded that a cable television show hosted by a Member of Congress should not be characterized as a contribution or expenditure largely because "no mention is made of your campaign or election to Federal office," and "[t]he content of the program was strictly limited to issues before the Congress or issues of relevance to your district," and "these programs will be issue oriented and devoid of campaign related material or content." *Id.* Wolfe's radio broadcasts do not conform to the guidance set forth by the Commission in this advisory opinion.

Wolfe's express advocacy that listeners vote for him is an "expenditure" under the Act and FEC regulations. Wolfe's fundraising, debate challenges, and criticism of Congressman Wamp – even when they do not contain the 'magic words' – are also an expenditure under the Act and FEC regulations.

Wolfe's "radio show" is in reality a political advertisement. It is not a detached discussion of public policy issues, listeners are treated to what amounts a barrage of political attacks on Congressman Wamp.

B. Wolfe Has Failed to Report Expenditures to the FEC and Provide Appropriate Disclaimers, Thus Frustrating the Public's Right to Know

Candidate Wolfe must report expenditures when the aggregate spending exceeds \$5,000 during a calendar year and file periodic reports thereafter. Last election, Wolfe failed to report at all. Now, the preceding discussion demonstrates that Wolfe has exceeded the \$5,000 reporting threshold by expending approximately \$2,000 per month on a radio broadcast; yet his reporting remains deficient. Wolfe has not complied with his reporting requirements under the Act. ~~Wolfe's own statements regarding fundraising remove any doubt as to his failure to report.~~

Wolfe has sporadically filed incomplete and inaccurate reports with the FEC. Wolfe has also been the recipient of FEC notices regarding the deficiency of his reporting. Wolfe is clearly aware of his obligation to report his political activities under the Act. Such knowledge would give rise to a knowing and willful violation.

**III. Conclusion**

John Wolfe's failure to comply with the Act and Commission regulations warrants investigation by the Commission. We respectfully request that the Commission investigate John Wolfe and, if necessary, file suit in federal court against him to ensure that these violations are punished. Similarly, in light of Wolfe's prior fine, these violations could very well be knowing and willful.

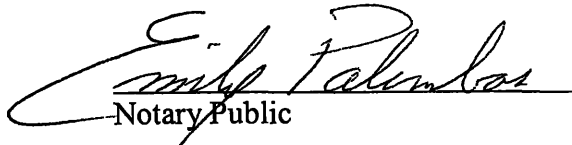
Respectfully submitted,



Donald F. McGahn II

DISTRICT OF COLUMBIA

SWORN TO AND SUBSCRIBED before me on this 1<sup>st</sup> day of November, 2004.

  
Notary Public

My commission expires:

1/2009

EMILY PALUMBOS  
Notary Public, District of Columbia  
My Commission Expires 1/2009

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